

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY  
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA  
CIVIL TRIAL DIVISION**

COLLEEN BARRETT,	:	NOVEMBER TERM, 2004
	:	
Plaintiff,	:	NO. 00104
	:	
v.	:	Control No. 051940
	:	
HUGH MICHAEL GALLAGHER,	:	
	:	
Defendant.	:	

**ORDER**

**AND NOW**, this 31<sup>ST</sup> day of August, 2005, upon consideration of defendant's Motion for Summary Judgment, plaintiff's response thereto, the briefs in support and opposition, and all other matters of record, it is hereby **ORDERED** that said Motion is **GRANTED** in part and Counts I and III of the Complaint are **DISMISSED** with prejudice.

The remainder of the Motion is **DENIED** without prejudice to renew at the close of discovery.

**BY THE COURT:**

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**C. DARNELL JONES, II, J.**

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**OPINION**

Plaintiff claims that she and defendant entered into a partnership to buy and develop certain real property (the “Property”), but the deed is in defendant’s name only. Plaintiff claims to have spent time and effort improving the Property, so that under the parties’ oral agreement, she is entitled to one-half of the Property. Plaintiff has asserted claims for quiet title/specific performance, breach of contract, fraud/deceit/misrepresentation, and quantum meruit. Defendant has moved for summary judgment<sup>1</sup> based on the statute of frauds, which motion is presently before the court.

Plaintiff may not assert a claim for quiet title/specific performance based on the parties’ alleged oral contract regarding the ownership of the Property because such a contract is unenforceable under the statute of frauds. *See* 33 P.S. § 1 (a contract granting an estate in land must be in writing). Plaintiff may not avoid the statute of frauds by claiming part performance of the parties’ contract because she does not allege that she had “open notorious, exclusive and continuous possession” of the Property, nor does she allege “such improvements and arrangements as will not reasonably admit of compensation in damages.” Kurland v. Stolker,

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<sup>1</sup> The parties have not yet completed, or even begun, discovery, so defendant’s motion is more in the nature of Motion for Judgment on the Pleadings.

516 Pa. 587, 533 A.2d 1370 (1987). *See also* Redditt v. Horn, 361 Pa. 533, 64 A.2d 809 (1949) (denying specific performance of oral contract concerning land).

However, there is no similar prohibition against the enforcement of an oral partnership agreement, so plaintiff may proceed with her breach of contract claim. *See* DeMarchis v. D'Amico, 432 Pa. Super. 152, 637 A.2d 1029 (1994) (imposing constructive trust on title holders of property for benefit of their business partners). *See also* 4-17 Corbin on Contracts § 17.12 (“there seems little necessity to invoke the statute [of frauds regarding land] in order to protect the parties in title-holding partnerships, there being adequate protection furnished by the provisions of the [Uniform Partnership Act] to lend reliability to the identification of partnership property and the interests of the partners in it.”) If plaintiff proves the existence of a partnership agreement which contains the terms that she alleges, then she may be entitled to recover some portion of the alleged partnership’s profits as damages.

At the very least, plaintiff may be entitled to compensation for the improvements she allegedly made to the Property, so she may proceed with her quantum meruit claim. However, plaintiff’s fraud claim must be dismissed under the gist of the action doctrine. *See* Etoll, Inc. v. Elias/Savion Advertising, Inc., 811 A.2d 10, 14 (Pa. Super. 2002)

### **CONCLUSION**

For all the foregoing reasons, defendant’s Motion for Summary Judgment is granted in part and denied in part.

**BY THE COURT:**

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**C. DARNELL JONES, II, J.**